85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
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CALE P. HAUN AND JULIA FAY HAUN

FEBRUARY 25, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 674]

The Committee on the Judiciary, to whom was referred the bill (S. 674) for the relief of Cale P. Haun and Julia Fay Haun, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that, in the determination of the 1953 individual income-tax liability of the claimants, the sole stockholders of the River Grange Co., Inc., which was liquidated pursuant to a plan of complete liquidation, the election of the claimants to have the benefits of section 112 (b) (7) (A) of the Internal Revenue Code shall be considered to have been filed within 30 days after the adoption of the plan of liquidation. These benefits were denied to the claimants because the mailing of their election was, without the fault or negligence of the claimants, delayed beyond the time limited in the statute.

STATEMENT

Section 112 (b) (7) of the Internal Revenue Code of 1939 provided, in the case of certain complete liquidations of domestic corporations,

for the deferral of tax upon unrealized appreciation in value of the property distributed in liquidation. In order to benefit by this provision, an election had to be filed within 30 days after the adoption of the plan of liquidation. The provisions relating to filing are set forth in section 112 (b) (7) (D) which states:

> The written elections referred to in subparagraph (C) must be made and filed in such manner as to be not in contravention of regulations prescribed by the Commissioner with the approval of the Secretary. The filing must be within 30 days after the adoption of the plan of liquidation, and may be by the liquidating corporation or by the shareholder.

The claimants, Cale P. Haun and Julia Fay Haun, on December 24, 1953, elected to assert their rights to the benefits of 112 (b) (7) of the Internal Revenue Code. They had retained the law firm of Hume, Howard, Davis & Boult to handle the matter as well as a firm of tax consultants and a firm of certified public accountants. Mr. and Mrs. Haun had for years depended on the senior partner of the law firm, Mr. Laurence B. Howard, for guidance in their tax matters. Therefore the proposed liquidation had been discussed with Mr. Howard early in 1953. However in July of 1953, Mr. Howard suffered a disabling cerebral hemorrhage and was without his faculties on December 23, 1953. Consequently, at the time of the corporation's liquidation in December, Mr. Howard's associates were not completely familiar with the matter, and failed to carry through the required filing. When the oversight was discovered the professional representatives of the claimants immediately filed written election called for in the law.

The committee feels that this sequence of events shows that it is unfair to penalize the claimants by refusing them the benefits of section 112 (b) (7), and therefore recommends that the bill be considered favorably.

The report of the Senate Committee on the Judiciary which comments further on the case, and contains the Treasury report is as follows:

[S. Rept. No. 59, 85th Cong., 1st sess.]

PURPOSE

The purpose of the proposed legislation is to grant relief to the claimants by providing that in the determination of the 1953 individual income-tax liability of the claimants, sole stockholders of River Grange Co., Inc., which was liquidated pursuant to a plan of complete liquidation adopted on December 24, 1953, the election of the claimants to have the benefits of section 112 (b) (7) (A) of the Internal Revenue Code shall be considered to have been filed within 30 days after the date of adoption of the plan of liquidation, these benefits having been denied the claimants because the mailing of their election was delayed, without negligence or fault on their part, beyond the 30th day following the adoption of the plan of liquidation.

STATEMENT

A similar bill, S. 2691, of the 84th Congress, was reported favorably by this committee on June 13, 1956, and was passed by the Senate, as reported, on July 13, 1956, but was not acted on by the House of Representatives before the adjournment of the Congress.

Section 112 (b) (7) of the Internal Revenue Code of 1939 provided, in the case of certain complete liquidations of domestic corporations, for the deferral of tax upon unrealized appreciation in the value of the property distributed in liquidation. In order to benefit by this provision, an election had to be filed within 30 days after the adoption of the plan of liquidation.

The bill sets forth that in the case of the claimants the mailing of such election was delayed, without negligence or fault on the part of such stockholders, beyond the 30th day following the adoption of such plan.

This is supported by a letter, dated June 25, 1955, printed in full below, from Charles G. Neese, present attorney for the claimants, who sets forth that the claimants, on December 24, 1953, elected the benefits of section 112 (b) (7) of the Internal Revenue Code; that the senior partner of the legal firm, retained by the claimants and instructed by them to carry through on the matter, had suffered a disabling cerebral hemorrhage and that his associates did not, as the claimants relied upon them to do, carry through on the required filing; and that upon learning of the failure of their professional representatives the claimants immediately executed the required filing.

The Treasury Department is not in favor of the enactment of the proposed legislation on the grounds that such relief would create an undesirable precedent and that such special relief constitutes unfair discrimination against other taxpayers similarly situated.

For a claimant similarly situated, however, this committee favorably reported a bill, H. R. 1596, of the 82d Congress, which became Private Law 362, of the 82d Congress.

From the record before it the committee believes that the proposed legislation is meritorious and recommends it favorably.

Attached and made a part of this report is (1) a report, dated March 14, 1956, from the Treasury Department, on S. 2691, the similar bill in the 84th Congress, and (2) a letter, dated June 25, 1955, from Charles G. Neese, attorney for the claimants.

TREASURY DEPARTMENT,
Washington, March 14, 1956.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: This letter is in reply to your request of August 5, 1955, for the views of the Treasury Department concerning S. 2691 (84th Cong., 1st sess.), entitled "A bill for the relief of Cale P. Haun and Julia Fay Haun." This bill, if enacted, would provide that, for the purpose of determining the individual liability for income taxes for the taxable year 1953 of Cale P. Haun and Julia

Fay Haun, their elections to have the benefits of section 112 (b) (7) (A) of the Internal Revenue Code of 1939 would be considered to have been filed within 30 days after the adoption, on December 24, 1953, of a plan of complete liquidation of River Grange Co., Inc. The bill states that such benefits were denied because the mailing of such election was delayed, without negligence or fault on the part of such stockholders, until the 250th day following the adoption of such plan.

Cale P. Haun and Julia Fay Haun were the sole stockholders of River Grange Co., Inc. The records of the Internal Revenue Service indicate that an examination of the return of this corporation was begun in September 1954. A question arose as to whether the stockholders had made an election under section 112 (b) (7) (D) to postpone the recognition of the gain on the assets distributed in complete liquidation, and it was found that no such election had been filed.

The representative of the taxpayers has advised the Internal Revenue Service that an election was filed on September 10, 1954, which was more than 8 months after the adoption of the liquidation plan of River Grange Co., Inc. The Service was unable to find this election, and a duplicate election was filed on June 10, 1955. There is no indication, in the records of this Department, of any reason other than oversight for the failure to file an election within the 30-day period specified in the law.

Section 112 (b) (7) provided a special rule, in the case of certain complete liquidations of domestic corporations occurring within 1 calendar month, for the treatment of gain on the shares of stock owned by qualified electing shareholders. The effect of this section was to permit deferral of tax upon unrealized appreciation in the value of the property distributed in liquidation. In order to be governed by section 112 (b) (7), an election had to be filed by the shareholder or by the liquidating corporation with the Commissioner of Internal Revenue on or before midnight on the 30th day after adoption of the plan of liquidation. Essentially, S. 2691 would waive this requirement for Cale P. Haun and Julia Fay Haun.

Congress has determined that it is a sound policy to include in certain revenue enactments permitting elections by taxpayers a time limit within which taxpayers must make their elections. Except in the case of special circumstances, which do not appear to exist here, this Department believes that the granting of special relief to a taxpayer who has not made his election within the time limit prescribed by law constitutes unfair discrimination against other taxpayers similarly situated. Such relief would create an undesirable precedent which might encourage other taxpayers to seek relief in this same manner.

Accordingly, the Treasury Department is not in favor of the enactment of S. 2691.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

NASHVILLE, TENN., *June 25, 1955.*

Re private act (by Mr. Kefauver) S. 2292 for the relief of Cale P. Haun, et al.

Senator HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
Senate Office Building, Washington, D. C.

DEAR MR. CHAIRMAN: The captioned Senate bill was introduced June 22 and to be finally considered at this session must be expedited to the greatest possible degree. Therefore, we are briefing the facts and the law herein to assist the committee and Congress as much as possible.

STATEMENT OF FACTS

Cale P. Haun and Julia Fay Haun were the sole stockholders of the River Grange Co., a Tennessee domestic corporation. Each owned 3,000 shares of common stock therein. On December 24, 1953, each of the stockholders elected to have recognized and taxed in accordance with section 112 (b) (7) of the Internal Revenue Code the gain on each and every share owned by each of them in said corporation pursuant to a plan of complete liquidation adopted on said date of the elections (see exhibits A attached). Taxpayers had retained Ewing & Talbot, First American National Bank Building, Nashville, Tenn., a firm of tax consultants; John S. Glynn & Associates, of the same mailing address, a firm of certified public accountants; and Hume, Howard, Davis & Boult, American Trust Building, Nashville, Tenn., a firm of attorneys, for a number of years. These three professional firms were directed by Mr. Haun to do everything necessary to carry through with the complete liquidation of the River Grange Co. and with the technical requirements incidental to the elections filed as aforesaid by the said stockholders to gain the benefits to which these taxpayers are entitled.

The principal adviser to taxpayers for many years had been Laurence B. Howard, Esq., senior member of the aforesaid law firm, and taxpayers relied upon the advice and professional services of Mr. Howard in all their business and legal transactions with Hon. Marshall Ewing, of the aforesaid firm of tax consultants advising with taxpayers and Mr. Howard on tax matters. The proposed liquidation of the above corporation was discussed among taxpayers, Mr. Ewing and Mr. Howard in the early and middle parts of 1953. However, in July 1953, Mr. Howard suffered a disabling cerebral hemorrhage and was without his faculties on December 23, 1953. A young associate in the aforesaid law firm was assigned to assist in the aforementioned liquidation and shareholders' elections in lieu of Mr. Howard. (Mr. Howard has only partially recovered at the present time and remains incapacitated and in enforced retirement. The former assistant general counsel of a railroad has now taken over Mr. Howard's responsibilities in the law firm.)

It was the reasonable expectation of taxpayers that the professional persons retained by them would follow through with all of the requirements of the law to gain them the relief by statute and to completely liquidate the said corporation. Therefore, it became the responsibility of either—

(1) the above firm of tax consultants, and/or
(2) the above firm of attorneys, and/or

(3) the above firm of accountants to file by January 23, 1954, notice of election of shareholder under section 112 (B) (7) of the Internal Revenue Code, form 964, in duplicate with the district director (at Nashville) of internal revenue, and copies also with each income-tax return for the taxable year of 1953 in which the transfer of all the property under the liquidation occurred.

While the details of the said liquidation were being discussed with the internal-revenue agent handling same, the said tax consultant was advised that no record of the required notices of election was noted in the Internal Revenue Service files of taxpayers. Investigation by the said tax consultant revealed that neither his firm, nor the law firm, nor the firm of accountants engaged so to do had filed the required notices.

On being so informed of the inadvertence of their professional representatives, taxpayers immediately filed (in duplicate) copies of form 964 with the Internal Revenue Service. Because of the reliance for so many years on Mr. Howard, taxpayers assigned thereupon as the reason for the delay "a cerebral hemorrhage suffered by our attorney" (see exhibit B attached).

Taxpayers retained copies of the typewritten copies of such notices, but the signatures and dates thereon affixed with pen and ink are not included on taxpayer's file copies; therefore, the exact date of filing cannot be ascertained from taxpayer's office copies, but it is determined to have been on or before September 30, 1954 (or on or before the 250th day following the actual election by taxpayers).

This writer was engaged more recently to seek relief for these taxpayers on the ground they had seasonally executed the said elections, and reasonably provided the means for strict compliance with the said statute by retaining reputable and competent professional counsel, and the mailing of the notices of elections was delayed without negligence or fault on the part of these taxpayers.

On May 18, last, inquiry was made for the second time of the Commissioner of Internal Revenue as to whether said form 964 mailed on or before September 30, 1954, had been located within his agency files (probably mailed on or about September 10, 1954) (see exhibit C attached). A representative of the said Commissioner advised this writer on May 26, last, that my inquiry was being referred to the district director of internal revenue, Nashville, for reply (see exhibit D attached). A representative of said director advised on June 2, 1955, that the said forms 964 could not be located for either of these taxpayers (see exhibit E attached). Following this seemingly final determination, taxpayers mailed again on June 8, 1955, duplicate copies of such elections with both the said Commissioner and said director with this notation on the faces of each thereof:

"This election of shareholder under section 112 (b) (7) of the Internal Revenue Code is a duplicate of form prepared, signed, and mailed to the Internal Revenue Service on or before September 30, 1954, by this electing shareholder. It is being filed as we are advised that the original form cannot be located in the Internal Revenue Service" (see exhibit F, attached).

STATEMENT OF THE LAW

Shareholders electing to have the benefits of section 112 (b) (7) of the Internal Revenue Code, relative to gain on shares of stock of a domestic corporation which they owned at the time of the adoption after December 31, 1950, of a plan for the complete liquidation of such corporation pursuant to which all the stock is canceled or redeemed, and the transfer of all the property of the corporation under the liquidation occurs entirely within some 1 calendar month in the calendar year 1953 must file with the Internal Revenue Service notices of such elections on prescribed forms (form 964) within 30 days after the adoption of the plan of liquidation (sec. 112 (b) (7), Internal Revenue Code (1939)).

Filing of the required notices of election (form 964) on the 31st day after the adoption of the plan of liquidation is not sufficient to comply with the statute and the Internal Revenue Service may not excuse the late filing even if the taxpayer is without fault or negligence regarding the delay in mailing (Tax Court Memo (1951) *In re N. H. Kelley, et al.*, docket Nos. 22356, 22357, 22360, 22361, 1951, C. C. H., at p. 143).

The Congress may grant taxpayers relief by the enactment of a private law declaring that, for the purpose of determining the individual liability for income taxes for a taxable year of a taxpayer not negligent or at fault in the delay in filing notices of elections under section 117 (b) (7) of the Internal Revenue Code, such late filing shall be considered to have been filed within 30 days after the date of adoption of a plan of complete liquidation by a liquidated corporation, and taxpayers may have the benefits of said section (Private Law 363, 82d Cong., ch. 576, 1st sess., H. R. 1596; (see also S. 636, 82d Cong., 1st sess.).

ARGUMENTS

It is clear that Congress has the right to enact a private law for the relief of taxpayers denied the benefits of section 112 (b) (7) (A) of the Internal Revenue Code where the taxpayers were without negligence or fault in complying strictly with the statute (Private Law 363, 82d Cong., supra).

And the mere passage of time in filing required notices of election under the statute or in the granting of relief by the Congress will not cause taxpayers to lose benefits granted by statute where the taxpayers are not personally negligent or at fault.

The Congress has granted such relief to distressed taxpayers 7 years after the taxable year involved (Private Law 363, 82d Cong., supra).

The tests of the precedents in the Congress seem to be whether the taxpayer, himself, was negligent or at fault personally, or the error or omission occurred through no negligence or fault of the distressed taxpayer (see actions of congressional committees).

Thus, where the taxpayer was attending to his own matters personally and was at fault because at the time of filing he was engrossed in a campaign seeking elective office, relief will be denied (see action of Senate Committee on the Judiciary, June 1955).

But, the precedents are to the contrary where the taxpayer entrusts the technicalities of complying with the statute to competent and reputable professional persons (Private Law 363, 82d Cong., supra).

THESE TAXPAYERS WERE NOT AT FAULT OR NEGLIGENT IN THE FAILURE TO COMPLY WITH THE STATUTE

1. Taxpayers had retained competent attorneys, tax consultants, and accountants to represent them and insure accuracy in their tax matters (statement of the facts, supra, p. 1).

2. Taxpayers directed three different firms in the fields of (*a*) law, (*b*) tax law, and (*c*) accounting to do everything necessary to carry through with the complete liquidation of the corporation they owned and with the technical requirements incidental to the elections to be filed by them to gain the benefits to which they are entitled and now seek (statement of the facts, supra, p. 1).

3. The negligence or fault in taxpayers' failing to comply with the statute cannot be imputed to taxpayers but to the omission of their (1) attorneys, and/or (2) tax consultants, and/or (3) accountants (statement of the facts, supra, p. 2).

4. A contributing factor to the failure to comply with the statute must be said to be the untimely, disabling illness and complete incapacity of the particular attorney with whom taxpayers had counseled so confidently over the years (statement of the facts, supra, p. 2).

5. Taxpayers executed the required notices immediately when advised to do so (exhibits A, infra).

6. (*a*) Taxpayers had no real or implied notice that their trusted professional aids had failed to comply with the statute for over 8 months following the omission (statement of facts, supra, p. 2).

(*b*) And, even if taxpayers had known of the omission 8 months earlier, the filing of the notices of elections after January 23, 1954, would have been insufficient compliance with the statute (statement of the facts, supra, p. 2; statement of the law, supra, p. 4; Tax Court Memo, supra, p. 4).

7. Immediately upon being advised of their failure to comply with the statute, taxpayers belatedly undertook to comply (statement of the facts, supra, p. 2; exhibits B, infra).

8. Taxpayers engaged additional counsel to seek relief of the Congress when apprised of the failure of their professional aids to comply with the statute (statement of the facts, supra, p. 3).

9. (*a*) Taxpayers caused persistent inquiry to be made to find the belatedly filed notices evidently lost in the Internal Revenue Service offices (exhibit C, infra; exhibit D, infra; exhibit E, infra; statement of the facts, supra, p. 3).

(*b*) Immediately upon being advised that the Internal Revenue Service that said belatedly filed notices could not be found in its offices, taxpayers refiled such notices (exhibit F, infra).

(*c*) It is a reasonable assumption to assume that the first notices mailed were lost or misplaced in the offices of the Internal Revenue Service. The records were transferred from Washington, D. C., to Nashville, Tenn., by the Internal Revenue Service (exhibit D, infra).

From all which it appears these taxpayers were not at fault or negligent, but actually were, and are being, very diligent in undertaking to comply with the statute and to gain the benefits to which they are entitled.

THE UNITED STATES WILL LOSE NO SUBSTANTIAL TAXES IF THE EQUITABLE RELIEF SOUGHT IS GIVEN BY CONGRESS

1. Taxpayer will not gain a special tax advantage by the passage of this private law. Taxpayers will gain only the benefits of the applicable statute to which they were already entitled by law if relief is granted as to the time of compliance therewith (sec. 112 (b) (7) (A), Internal Revenue Code).

2. The distress of taxpayers if this private law is not enacted is—

(*a*) Taxpayers, who are blameless for their present plight, will be compelled to pay immediately in cash an estimated $50,000 in additionally assessed taxes for 1953. The distress hereof is obvious.

(*b*) Taxpayers, who are blameless for their present plight, may be forced to dispose of, at a sacrifice now, assets to pay the additional tax assessments. (NOTE.—Much of the property represented in the liquidation of the corporation is undeveloped real estate contiguous to an exclusive residential area. This real estate is ideal for subdivision. Properties on two sides of subject property have been developed, and that on another side is in the process of being developed. There are plans to develop this real estate, and unquestionably more will be realized therefrom in an orderly development and sale than from a forced sale to pay taxes.)

3.—(*a*) When a corporation is liquidated under the provisions of section 112 (b) (7), as aforesaid, recognition of any gain or loss is deferred until disposition is made of the property. The property received by the shareholders in the corporate liquidation is allocated for tax purposes on the basis of the stock of the liquidated corporation, with adjustment for any recognized gain on liquidation (sec. 112 (b) (7), Internal Revenue Code).

(*b*) If, however, this private law is not enacted and this property is taxed upon its receipt by these taxpayers in the process of the corporate liquidation, in that event, the property acquires a cost for tax purposes equal to the value determined at the time of corporate liquidation, and any tax accrued is paid when the corporation is liquidated.

(*c*) Therefore, if this private law if passed, when the real estate is sold, the amount of tax eventually paid will be identical to that paid now. The only difference is when the tax will be paid. In all probability, if this private law is enacted and a smaller amount of tax is paid by taxpayers over a period of 4 or 5 years, or less, the only difference in taxes collected by the United States will be the interest thereupon.

(*d*) Most of the remainder of the property represented in this corporate liquidation consists of rapidly depreciable heavy machinery, such as bulldozers, tractors, etc. Because of the comparatively short life of same for depreciation, any tax paid immediately by taxpayers upon the liquidation of the corporate assets will probably be recovered in depreciation allowances within 3 or 4 years.

(NOTE.—This type of equipment represents only a small portion of the corporate assets liquidated.)

Under the circumstances of a great hardship to taxpayers if the subject private law is not enacted, and of no substantial loss of taxes by the United States if same is enacted, there is strong equity in favor of passage of the private law.

TAXPAYERS IN SIMILAR DISTRESS ARE ENTITLED TO EQUAL JUSTICE AND RELIEF

That one taxpayer should in similar circumstances gain a preference over another, or be penalized though blameless when others are not, is inimical to our concepts of equal justice under the law in this Nation.

The Congress has very wisely, and in furtherance of that concept, granted relief to individuals by private law when that individual is denied equal justice and compelled to undergo unwarranted hardship through no fault of his own when remedy is unavailable to the individual elsewhere or when the remedy is inadequate.

Having extended relief to other taxpayers in similar distress, the Congress should now give relief to these taxpayers.

TAXPAYERS HAVE NO OTHER REMEDY TO OBTAIN RELIEF

The Commissioner of Internal Revenue has no authority to waive the strict compliance with section 112 (b) (7) (A) of the Internal Revenue Code regardless of the equities involved.

The Tax Court has held that it will grant no relief for late filing of notices of elections of shareholders for any reason whatever (see statement of the law, supra, p. 4).

The only relief available to these taxpayers anywhere is by the enactment by the Congress of this private law.

CONCLUSIONS

Under the facts of these taxpayers' situation viewed in the light of precedents established by the Committees of Congress concerned with such matters, these taxpayers are justly and equitably entitled to the relief sought. Too, it is material to these taxpayers that the relief sought be granted prior to the adjournment of the 1st session of the 84th Congress. Otherwise, the relief comes too late to prevent irreparable and sacrificial hardship.

(NOTE.—The bill filed would grant relief if the statute were complied with on the 250th day (September 30, 1954) following the adoption of the plan of corporate liquidation (this should be amended to read the 280th day). Unless the Internal Revenue Service will concede that said notices of election were in fact filed by taxpayers on or before September 30, 1954, this language should be amended in lieu thereof to read: "the five hundred thirty-third day".)

Respectfully submitted,

CHARLES G. NEESE.

(Enclosed exhibits A through G are on file with the committee.)

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